

PT 97-44

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

GARWIN FAMILY FOUNDATION)		
Applicant)		
)		
)	Docket #	95-39-5
v.)		
)	Parcel Index #	15-20-481-032-0040
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John C. Ryan and Ms. Kara L. Jones appeared on behalf of the Garwin Family Foundation.

Synopsis:

The hearing in this matter was held on June 26, 1996, at 2309 West Main Street, Marion, Illinois, to determine whether or not Jackson County Parcel No. 15-20-481-032-0040 qualified for exemption from real estate taxation for the 1995 assessment year.

Dr. Leo Garwin, president of the Garwin Family Foundation (hereinafter referred to as the "Applicant"), Dr. Marsha G. Ryan, treasurer of the applicant, and Mr. Thomas Britton, acting dean of the School of Law at Southern Illinois University (hereinafter referred to as "SIU") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of this parcel during the 1995 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the applicant used this parcel for charitable or school purposes during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is

determined that the applicant owned this parcel during the 1995 assessment year. It is further determined that the applicant is a charitable organization. Finally, it is determined that the applicant used 14% of this residence and parcel for charitable purposes, while the remaining 86% of said residence and parcel were vacant and unused during the 1995 assessment year. It is therefore concluded that 14% of this residence and parcel qualified for exemption during the 1995 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that 14% of this residence and parcel qualified for exemption during 1995, and the remaining 86% of the parcel and residence did not qualify for exemption during said year, was established by the admission in evidence of Department's Exhibits 1 through 5B.

2. The applicant acquired this parcel and the residence thereon pursuant to a warranty deed dated August 17, 1994. (Dept. Ex. No. 1A)

3. The applicant was incorporated as an Oklahoma not-for-profit corporation on August 19, 1993. (Dept. Ex. No. 1B)

4. The purposes of that corporation, as set forth in its articles of incorporation, read in part as follows:

The Corporation is formed exclusively for charitable, educational, religious, literary, and scientific purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended (referred to herein as the "Code"), or the corresponding provision of any future United States internal revenue law. (Dept. Ex. No.1B)

5. From the beginning, the purposes of the applicant have been two fold. The first was to establish and fund the Arthur Grayson Memorial Distinguished Visiting Professorship of Law and Medicine (hereinafter referred to as the "Grayson Visiting Professor"). The second was to establish and fund a pair of scholarships for students entering SIU in the joint fields of medicine and law. (Tr. p. 13)

6. The agreement between the Board of Trustees of SIU and the applicant concerning the Grayson Visiting Professor is set forth in a document which is identified as Applicant's Exhibit A. That document was executed in late October, 1994. (Tr. p. 45)

7. In paragraph 1 of that document, it is agreed that the applicant will supplement the agreed salary of the Grayson Visiting Professor, up to \$50,000.00 for one school year. Said paragraph 1 ends with the following sentence:

The Foundation may also provide free housing for a Grayson Distinguished Visiting Professor. (Appl. Ex. No. A)

8. The initial term of this agreement is 5 years. (Appl. Ex. No. A)

9. This agreement also provided that the first Grayson Visiting Professor would be appointed for the 1995-1996 academic year. (App. Ex. No. A)

10. Acting Dean Britton testified that the first Grayson Visiting Professor, Mr. Rob Schwartz, of the University of New Mexico, would arrive on the campus in August of 1996. (Tr. p. 32)

11. While the terms of his employment had been agreed upon, Dean Britton did not know whether or not a contract had been signed with Mr. Schwartz as of the date of the hearing in this matter, June 26, 1996. (Tr. p. 32)

12. Dr. Garwin testified that the office of the applicant occupied 14% of the residence on this parcel on January 1, 1995. The remaining 86% of that residence was vacant on that date. (Tr. pp. 20 & 21)

13. The office of the applicant remained in the residence on this parcel during the entire 1995 assessment year. During the 1995 assessment year, there was no Grayson Visiting Professor. The remaining 86% of the residence on this parcel remained vacant and unused except for two or three occasions during the year. On those occasions, Dr. Garwin stayed there for several days while visiting from Oklahoma City to conduct the business of the applicant and also to visit with his family. (Tr. pp. 21 & 22)

14. Dr. Marsha G. Ryan, treasurer of the applicant is Dr. Leo Garwin's daughter. Mr. John C. Ryan attorney for the applicant is Dr. Leo Garwin's son-

in-law. Dr. Mark Garwin is an anesthesiologist in the Carbondale area, the vice president of the applicant, and Dr. Leo Garwin's son. (Tr. pp. 19 & 34)

15. The 86% of the residence on this parcel which was intended for use by the Grayson Visiting Professor, remained vacant and unused from the date the applicant acquired the property, on August 17, 1994 to the date of the hearing, June 26, 1996, with the exception of several infrequent incidental uses by Dr. Garwin. In fact, as of the date of the hearing it was not anticipated that the first Grayson Visiting Professor would begin to reside in this 86% of the residence until sometime in August of 1996. (Tr. p. 32)

16. It was the intention of the school of law that the Grayson Visiting Professor would teach perhaps one seminar each semester, produce one scholarly work during the academic year, and stimulate the intellectual curiosity of the students. (Tr. p. 27)

17. It is difficult to find suitable housing for visiting faculty to rent in Carbondale. (Tr. pp. 37 & 42)

18. It would also be helpful if the house could be partitioned so that an office with a separate entrance for the applicant could be maintained in the house, without disturbing the Grayson Visiting Professor and his or her family. (Tr. p. 36)

19. The parcel here in issue, and the residence thereon, meets all of the foregoing criteria. In addition, this parcel is directly across the street from the law school parking lot and the law school. (Tr. pp. 35-37)

20. The applicant also acquired and provided furnishings for the house. (Tr. pp. 37 & 38)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school

districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

35 **ILCS** 200/15-35 provides in part as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt Also exempt is:

- (c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely, and,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based on the foregoing, I conclude that the applicant owned this parcel during the entire 1995 assessment year.

I take Administrative Notice of the fact that the Department had exempted 14% of this residence and parcel, which was used by the applicant as its

administrative office, and consequently had determined that the applicant was a charitable organization.

To qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable or exempt purposes. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987) and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college, was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to or did they perform any of their exempt duties there?

In addition to the fact that Dr. Leo Garwin's two or three stays of less than a week in the 86% of the house on this parcel during the 1995 assessment year were infrequent and incidental, it was not established that they qualified pursuant to either of the MacMurray College tests enumerated in the preceding paragraph.

When the applicant purchased this parcel on August 17, 1994, it was with the clear intention of using 86% of the house and parcel as a residence for the Grayson Visiting Professor and 14% of the house and parcel as its administrative offices. The evidence is clear that the applicant did use the 14% of the house and the parcel as its administrative office during the 1995 assessment year, and the Department in fact exempted that portion in the initial determination in this case. Concerning the 86% of the house and the parcel which were still not being used as a residence for the Grayson Visiting Professor on the date of the hearing, in the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt the property. The Court required that the actual primary exempt use

must have begun for the property to be exempt. That did not happen concerning 86% of the house and the parcel during the 1995 assessment year, or even up to the date of the hearing on June 24, 1996. I would, therefore, respectfully suggest to the applicant that once the Grayson Visiting Professor has moved in to the 86% of the residence on this parcel it may wish to reapply for exemption for this parcel. It would appear to me that pursuant to 35 **ILCS** 200/15-65 and 35 **ILCS** 200/15-35 (c) this 86% of the residence and parcel may qualify for exemption if it meets one of the MacMurry tests. That of course cannot be determined until the Grayson Visiting Professor is actually using 86% of the house and 86% percent of the parcel on which it is located.

I therefore recommend that 14% of Jackson County Parcel Index No. 15-20-481-032-0040 and 14% of the residence located thereon be exempt from real estate taxation for the 1995 assessment year.

I further recommend that 86% of Jackson County Parcel Index No. 15-20-481-032-0040 and 86% of the residence located thereon remain on the tax rolls for the 1995 assessment year and be assessed to the Garwin Family Foundation, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July 21, 1997